**Accountability and Freedom of Peaceful Assembly**

**Neil Jarman[[1]](#footnote-1)**

Accountability is considered to be one of the ‘hallmarks of modern democratic governance’, an element of the wider right to participation and central to democratic standards in so far as it (a) includes elements of democratic control, through holding public figures to account; (b) serves to create or uphold a sense of integrity of public governance and the legitimacy of public institutions; and (c) should lead to an improvement of performance and a raising standards of standards; while (d) in some circumstances of actual or perceived injustice it can provide a sense of public catharsis.[[2]](#footnote-2)

Accountability is a part of a broad set of social relationships, whereby an actor has an obligation to explain and justify their conduct to a wider group. Within the notion of a social relationship, accountability presumes a series of connected actions, which include:

1. An expectation that relevant information about behaviour, process or activity is provided either on a routine basis or on request;
2. That the provision of information assumes an opportunity to question and challenge the official or authority about the information provided; which in turn leads to:
3. A possibility of change in future behaviour, process or activity in response to the questions and concerns raised; and or
4. A potential for personal or institutional liability for the behaviour, process or activity and which might involve some form of retribution or punishment.

However, while accountability is regarded as a central concept within the process of public management, it remains a ‘rather elusive’ concept. This is particularly true in relation to freedom of peaceful assembly where its importance is widely cited but there is no clear framework or standard for accountability across all aspects of state responsibility for facilitating, protecting and enabling the right.

The European Center for Not-for-Profit Law (ECNL) held a workshop in Budapest in November 2017, with participants from CSOs in 13 countries,[[3]](#footnote-3) as part of a wider programme on monitoring compliance with the right to peaceful assembly.[[4]](#footnote-4) During the workshop participants outlined an overarching and inclusive framework for accountability in relation to the regulation and facilitation of peaceful assemblies. They sought to identify how state bodies and their representatives might be held accountable in relation to law making; administration of assemblies; policing of assemblies and matters of justice related to assemblies. Participants identified a range of actions that focus on such matters as the provision of relevant information; being open to dialogue and communication; being prepared to engage with a local and international actors; be held to account by independent bodies; consulting on and enacting changes to decisions, practices and procedures; having procedures and process in place to ensure organisations and individuals within them are accountable and liable for their actions and inactions; and keeping practices and procedures under review to ensure they remain effective.

In so doing the workshop identified a number of key actions for the four main areas of law making, administration, policing and justice that, if implemented, would begin to ensure a greater degree of public accountability in relation to protecting, facilitating and enabling the right to freedom of peaceful assembly.

**Law making**

1. Authorities should engage in open public consultation on new laws or proposed changes to existing law. Draft legislation should be publically accessible, online wherever possible, for review and comment. The consultation should include all stages of drafting and revising the law. Sufficient time should be made to allow for an effective public response.
2. The consultation process should be participatory, open and transparent. It should allow for participation from diverse sectors, including CSOs, human rights defenders, practitioners and academics.
3. There should be a mechanism for reviewing existing legislation and a process for responding to criticisms of existing laws and the application of the law. Where appropriate the review process should be included as an element of the legislation.
4. There should be an expectation that legislation is in compliance with international human rights standards and the authorities should engage with relevant international expertise to ensure legislation is compliant with international human right standards.

**Administration**

1. The designated bodies responsible for different aspects of administering the notification of assemblies should be clearly identifiable.
2. The notification process should not be overly bureaucratic.
3. All elements of the notification process should be clear and should include allowance for consultation; dialogue; decision making; notification of decisions; review and appeal.
4. Information should be published on all notifications once they are received, preferably online, so that they can be readily accessed.
5. Information should be published, preferably online, on any advance restrictions or prohibitions imposed on assemblies as soon as a decision is taken.
6. There should be a clear and accessible process for appealing against restrictions on assemblies, and which should take place within a timeframe that ensures the assembly is able to take place at the notified time.
7. The authorities should publish data, on at least an annual basis, on the number of assemblies notified, and numbers of those restricted or banned. Published data should also include number of spontaneous or un-notified assemblies; numbers of individuals arrested or detained; all instances of use of force (by type of weapon and scale of use) or dispersal; number of persons injured (including police officers) etc. Data should be made available by relevant geographical location or administrative district.

**Policing**

1. The police should publish all policing protocols relating to assemblies, including those relating to command and control structures; use of force; dispersal; dealing with complaints; arrests and detentions. Policing protocols should be reviewed by an independent body against international human rights standards.
2. There should be a single clear command structure for police operations at assemblies, and which covers all operational law enforcement personnel.
3. The police should always be willing to engage in dialogue with assembly organisers before, during & after assemblies.
4. All police officers should be individually identifiable while on duty.
5. Police should facilitate and enable the access of media and monitors at assemblies.
6. Senior operational commanders should be accessible to representatives of NHRIs and Ombudsman during an assembly.
7. All complaints against the police and all disciplinary procedures should include an element of external independent review.
8. All disciplinary procedures for police officers should be in line with international human rights standards. Details of the outcome of disciplinary procedures should be published online as soon as they are finalised.
9. Any private security personnel involved in aspects of public assemblies should be held publically accountable for their actions in the same way that a police officer might.

**Justice**

1. Individuals should only ever be held liable for their own actions and not for the actions of others that occur at an assembly.
2. Fair trial principles, including access to free independent legal advice and medical assistance, should apply in all instances where people are detained as a result of participation in an assembly.
3. All legal hearings in administrative, civil or criminal cases should open, transparent and compliant with international human rights standards. The judiciary should be independent and seen to be independent.
4. All legal decisions should be open, transparent and public and any punishments handed down by the courts should be proportionate.
5. All court cases should be open to monitoring by independent bodies.
6. The courts should publish data on cases relating to activities that occurred as part of an assembly.

**Key Actors**

There are a range of key actors that have a role to play in holding the authorities effectively to account in relation to restrictions that might be imposed on assemblies or participants in assemblies. These include:

* National Human Rights Institutions / Ombudsman Office
* Media
* Human rights defenders
* International and regional bodies

To be effective such bodies should have access to additional relevant data on request; to relevant assembly related events including all areas of public assemblies; detention facilities and court cases.

1. Director of the Institute for Conflict Research, Belfast and Chair of the ODIHR Expert Panel on Freedom of Peaceful Assembly and Association, but writing in a personal capacity. [↑](#footnote-ref-1)
2. See Mark Bovens (2005) Public Accountability. In the Oxford Handbook of Public Management. <https://books.google.co.uk/books?hl=en&lr=&id=_0epYa1LF8MC&oi=fnd&pg=PA182&dq=mark+bovens+public+accountability&ots=ykrXsivZCh&sig=LZV6JyUhTMW-Vs4Yx_p6JG2uGs0#v=onepage&q=mark%20bovens%20public%20accountability&f=false> [↑](#footnote-ref-2)
3. Participants came from Albania, Armenia, Belarus, Bosnia Herzegovina, Bulgaria, Hungary, Kosovo, Macedonia, Montenegro, Moldova, Serbia, UK and Ukraine. [↑](#footnote-ref-3)
4. The ‘Monitoring the Right to Free Assembly’ regional project, managed by ECNL, is made possible by the International Center for Not-for-Profit Law (ICNL) through the Civic Space Initiative, financed by the Government of Sweden. <http://ecnl.org/publications/monitoring-the-right-to-free-assembly-in-11-countries-2018/> [↑](#footnote-ref-4)